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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,085	08/17/2007	William H. McNamee	118989-06068225	8794
20583	7590	05/09/2011	EXAMINER	
JONES DAY 222 EAST 41ST ST NEW YORK, NY 10017			VALDEZ, DEVE E	
			ART UNIT	PAPER NUMBER
			1765	
			MAIL DATE	DELIVERY MODE
			05/09/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/583,085

Applicant(s)

MCNAMEE ET AL.

Examiner

DEVE VALDEZ

Art Unit

1765

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 April 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Rabon Sergent/
Primary Examiner, Art Unit 1765

Continuation of 11. does NOT place the application in condition for allowance because: Firstly, the applicant argues that Bloom is directed towards latex paint compositions to provide dry paint films that are more durable and water resistant and Carpenter is directed towards providing thickener compounds in personal care products, such as shampoos, particularly baby shampoos. The examiner has considered the applicant's arguments, however, the examiner disagrees. Bloom and Carpenter are drawn to aqueous systems comprising surfactants, therefore it would have been obvious to combine the references since both references are drawn to similar systems. It is noted that a prima facie case of obviousness does not require the solution of the same problem or recognition of the same advantages as applicant's invention. In re Dillion, 16 USPQ 2nd 1897. Secondly, the applicant argues Bloom does not provide compounds comprising more than one double unsaturated acryl residue, as Bloom is directed to mono-esters. The examiner disagrees because Bloom teaches polyunsaturated fatty acid or derivatives which would read on linolenic acid derivative which has a 1.2 groups/molecule that comprises a hydrocarbyl group comprising at least two ethylenic double bonds. Moreover, the applicant argues that replacing Carpenter's optional saturated fatty acid groups or mono-unsaturated fatty acid groups with Bloom's polyunsaturated fatty acid mono-ester groups also fails to provide any guarantee of success that such a change to a personal care product thickener would develop an effective emulsifier. The applicant has not provided evidence that by replacing Carpenter's fatty acid groups with Bloom's polyunsaturated fatty acid would not develop an effective emulsifier. Lastly, the examiner has considered the applicant's unexpected results, however, the showing of unexpected results are not commensurate in scope with the claims in terms of the components and amounts of components. It has been held that to overcome a reasonable case of prima facie obviousness a given claim must be commensurate in scope with any showing of unexpected results, In re Greenfield, 197 USPQ 227. .